

1 BEFORE THE
2 POLLUTION CONTROL HEARINGS BOARD
 STATE OF WASHINGTON

3 IN THE MATTER OF)
4 DAG'S DRIVE-IN RESTAURANTS,)
)
5 Appellant,)
)
6 vs.)
)
7 PUGET SOUND AIR POLLUTION)
8 CONTROL AGENCY,)
)
 Respondent.)
)
9 _____)

PCHB No. 276

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

10 This matter, the appeal of a \$50.00 civil penalty for an alleged
11 smoke emission violation of respondent's Regulation I, came before all
12 members of the Pollution Control Hearings Board at a formal hearing in
13 a conference room of respondent's Seattle offices at 1:30 p.m.,
14 April 5, 1973.

15 Appellant appeared through its president, J. E. Messett,
16 respondent through its counsel, Keith D. McGoffin. Evan Aaron, Seattle
17 court reporter, recorded the proceedings.

18 Witnesses were sworn and testified. Exhibits were offered and

1 admitted. Appellant made a statement.

2 On the basis of testimony heard, exhibits examined and statement of
3 appellant, the Pollution Control Hearings Board prepared Proposed
4 Findings of Fact, Conclusions and Order which were submitted to the
5 appellant and respondent on May 11, 1973. No objections or exceptions
6 to the Proposed Order having been received, the Pollution Control
7 Hearings Board makes and enters the following

8 FINDINGS OF FACT

9 I.

10 On December 27, 1972, from the stack of an incinerator at
11 one of appellant's restaurants at 800 Aurora Avenue North, Seattle,
12 King County, there was emitted for at least six consecutive minutes
13 gray smoke greater in opacity than 40 percent.

14 II.

15 Section 9.03(a) of respondent's Regulation I makes it unlawful to
16 cause or allow the emission of an air contaminant for more than three
17 minutes in a one hour period greater in opacity than 40 percent.

18 III.

19 Respondent issued to appellant Notice of Violation 6784 and
20 Notice of Civil Penalty No. 611 in the amount of \$50.00 in connection
21 with the December 27, 1972 incident. The civil penalty is the subject
22 of this appeal.

23 IV.

24 Subsequently, appellant removed the above-mentioned incinerator
25 and substituted a haul-away dumpster for disposal of the restaurant's

26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

1 waste material.

2 From these Findings, the Pollution Control Hearings Board comes
3 to these

4 CONCLUSIONS

5 I.

6 Appellant was in violation of Section 9.03(a) of respondent's
7 Regulation I on December 27, 1972.

8 II.

9 Notice of Civil Penalty No. 611, being an amount which is one-
10 fifth of the maximum allowed for a violation of respondent's
11 Regulation I, was reasonable.

12 III.

13 However, appellant has been to considerable expense to make sure
14 its restaurant is in compliance with respondent's clean air
15 regulations. It abandoned a four thousand dollar-approved incinerator
16 in favor of a haul-away system for waste disposal so that malfunctions
17 of the incinerator could not be a possible source of air pollution.
18 With compliance attained, collection of the penalty seems unnecessary.

19 From these Conclusions, the Pollution Control Hearings Board
20 issues this

21 ORDER

22 The appeal is denied, but Notice of Civil Penalty No. 611 is
23 suspended on condition of no further violation for a period of six
24 months from the date of this Order.

25

26

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 DONE at Lacey, Washington this 14th day of June, 1973.

2 POLLUTION CONTROL HEARINGS BOARD

3 Walt Woodward
4 WALT WOODWARD, Chairman

5 W. A. Gissberg
6 W. A. GISSBERG, Member

7 James T. Sheehy
8 JAMES T. SHEEHY, Member

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27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER